

4.2 THE LAWS OF QIN

Our historical sources for the period of Qin growth and dominance achieve a rare degree of unanimity in their characterization of the Qin legal code as harsh and oppressive. But they offer very few examples of Qin laws and regulations, and the Legalist texts, which we might expect to provide models for such a code, virtually never discuss specific laws, generally confining themselves to theory of law and to administrative arts.

For this reason, there was considerable excitement when, in 1975, a large collection of written legal codes and case books was discovered in the grave of an official of Qin who appears to have been buried in 217 B.C. Other documents found in the tomb indicated some biographical facts about the occupant, whose name was Xi. He was born in 262, and served successive appointments that required him to apply both administrative and criminal law. He apparently chose to be buried with the bamboo strips of his code and case books, perhaps an indication of their function as symbols of personal status.

After a number of years, scholars in China managed to decipher the greater part of the crabbed characters on the strips and the legal terminology they conveyed. Their glossed editions of the texts were subsequently translated into English by A.F.P. Hulsewé, the leading Western scholar of Han legal codes.

The nature of these law codes came as a surprise. Not only did they fail to reflect the type of arbitrary cruelty associated with the Qin, they were clearly attempts at careful legal reasoning and prudent administrative management. Qin codes were concerned with issues of the relationship between criminal guilt and criminal intent, the measured differentials in legal treatment implied by the Qin system of eighteen ranks, limits of shared liability between spouses and among the members of a mutual responsibility group, and many other issues.

Before presenting a selection of passages from these legal texts, it will be worthwhile to note the types of punishment meted out by the Qin penal system. The most extreme penalty was death, but that penalty could be intensified by the method selected for it. For example, the criminal's entire family might be executed. His corpse could be exposed in the marketplace, or his head mounted on a pike to add disgrace to death. Various horrific forms of execution were available, as well as a variety of pre-execution tortures of the grossest kind. Brutal as these appear to us, they were not Qin inventions, but rather extensions of conventional Warring States practices.

More measured punishments for specific levels of criminal behavior included, in descending order, castration, amputation of both feet, of the left foot, cutting off the nose, and tattooing the face. These were the five mutilating punishments. Below these were various forms of forced labor, often accompanied by flogging, and the lesser mutilation of having one's beard shaven. Apparently, under certain circumstances or at certain ranks, these punishments could be "redeemed" by payment of specified sums of money.

Fines seem to have taken two forms in these recovered texts. Sometimes these were stated in amounts. Unfortunately, the units are all expressed in terms of values of military armaments –

two shields; three suits of armor – the worth of which is unclear to us. In some cases, fines were expressed in terms of redemption costs; for example, a convict might be sentenced to redeem a penalty of tattooing, meaning that he had to pay as a fine the cost of such a redemption.

The purpose of this section is not to give a comprehensive overview of Qin law, but rather to allow you to examine some data and infer the general features of Qin legal thinking – it represents, after all, Legalism in practice. We should be able, even from this small sample, to infer some basic features of the way in which the Qin government conceived the proper treatment of people by those in authority. I have made most of these selections from the texts dealing with criminal rather than administrative law because of their more colorful subject matter.

Hulsewé's translations are highly technical, which makes them difficult to read in places. These translations are based on the transcribed texts, but have been closely guided by Hulsewé's interpretations (for those interested in looking further, I have indicated the passage numbers assigned by Hulsewé). The sections include laws concerning theft, violence, murder, bearing witness, breaches of official duty, and procedures of investigation and trial.

Theft

1. **Group theft.** When five men commit robbery together and the amount stolen exceeds as little as one cash, they are punished with the amputation of the left foot and tattooing, and they are sentenced to terms at hard labor. If there is a group of fewer than five men and the stolen goods exceeds 660 cash, they are tattooed, their noses are cut off, and they are sentenced to terms at hard labor. If the amount is between 220 and 660, they are tattooed and sentenced to hard labor. If it is less than 220, they are banished. (D 1)

2. **Conspiracy to steal.** *A* and *B* are previously acquainted. *A* goes to rob *C* and soon after he arrives, *B* also comes to rob *C*. The two talk and then each steals for himself. The stolen goods of each one are worth 400 cash. After they leave, they are arrested together. What is their sentence?

If they had not plotted beforehand, each is liable for his own share.

If they had plotted beforehand, each would be sentenced for the combined sum. (D 11)

3. **Theft foiled.** *A* plots to send *B* out to steal. On the agreed on day, *B* sets off to steal but before he arrives, he is caught. [What should their sentence be?]

Each must pay a fine equal to the redemption cost of tattooing. (D 3)

4. **Theft by slaves.** A male slave urges a female slave to steal her master's ox. They sell it and with the money, together they flee the state. Crossing the frontier they are caught. How should each of them be sentenced?

They are sentenced to hard labor and tattooed. [After their terms,] they are each returned to their masters. (D 4)

The nature of slavery in the Qin state is not entirely clear. In general, male and female slaves are denoted as “servants” and “concubines” respectively, but they are clearly in no sense independent actors in these codes, and the term “slave” comes closer to reflecting their legal status.

5. Theft by a convict. A man serving a term as a forced labor guard steals 110 cash, but before he is discovered he denounces himself. How should he be sentenced?

He should have his beard shaved and serve a term as a bond-servant. (Another [code] says he should be fined the value of two suits of armor.) (D 7)

Guards over those performing forced labor were themselves serving penal terms.

6. Knowledge of theft. A steals less than one cash and goes to the house of B. B is not aware of the theft. How should B be sentenced?

Do not sentence him.

What if he was made aware of it but did not arrest A?

He should be fined the value of one shield. (D 9)

7. Theft by an artisan. An artisan steals goods of value less than one cash. Are the men of his mutual responsibility group liable to be flogged?

No. (D 12)

Note that the occupation of the thief is specified, suggesting that it has a bearing on the sentence. In traditional formulations of social classes, artisans were viewed as of higher status than the far more numerous peasants.

8. Theft and the family. [The code states:] “A father stealing from his children is not considered a case of theft.” Now, if a foster father steals from his foster children, how should he be sentenced?

He is treated as a thief. (D 17)

9. When a person’s slave robs his master’s father or mother is this considered to be “robbing one’s master” or not?

If the parents are living in the same household as the master, it is considered to be robbing one’s master, but not if they are not household members. (D 18)

10. For robbery and other crimes where “those who dwell together” are adjudicated as co-responsible, what is the meaning of the phrase “those who dwell together?”

It refers to living in the same household, but indicates that while the household is responsible for transgressions of its slaves, slaves are not liable for the transgressions of the household. (D 19)

11. Liability and intent. A commoner without rank steals a goat. On the goat’s neck is a rope; the rope is worth one cash. How is he to be sentenced?

The thief’s attention was on the goat he stole; the rope attached to the goat was merely a means for him to drag away the goat. The deliberations should not go beyond the goat. (D 24)

12. **Theft and amnesty.** Somebody steals 1000 cash prior to proclamation of an amnesty. After the amnesty is proclaimed, when he has spent it completely, he is caught. How is he to be sentenced?
Do not sentence him. (D 29)

Violence

13. **Fighting.** When people fight and wound each other are they both to be sentenced or not?
They are both to be sentenced. (D 62)
14. **Domestic violence.** A wife is insubordinate and the husband beats and flogs her, tearing an ear, breaking a limb or finger, or dislocating a joint. How should the husband be sentenced?
He warrants shaving of the beard. (D 64)
15. **Inflicting mutilating injury.** When during a fight someone bites off another person's nose or ear, finger or lip, how is each of these to be sentenced?
These all warrant shaving of the beard. (D 68)
16. **Injuries of honor.** Commoner A draws his sword in a fight and slices off B's topknot. How is A to be sentenced?
He shall suffer no mutilating punishment but shall be sentenced to hard labor. (D 69)

Murder

17. **Intent.** When an arresting deputy pursues and arrests a fugitive criminal, the criminal beats and kills him. Is the criminal to be considered as having killed a person in the course of a crime or as having killed him in a fight?
This is a case of killing a person in a fight, but the court precedents treat it as killing a person in the course of a crime. (D 53)
18. **Murder by means of a child agent.** A plots to send B to rob and kill someone. As his share, he receives ten cash. If B is not yet of adult stature, how should A be sentenced?
His body should be tied to wagons and ripped apart. (D 54)
19. **Murder of infants and children.** To kill a child without authorization is punishable by tattooing and being sentenced to hard labor for man or woman. But there is no crime if the child is newly born and has strange marks or is deformed.
Now, let's say that a child is born whole of body without strange features, and a person kills it merely because of having too many children and not wishing it to live. How is this to be sentenced?
This is treated as a case of killing a child. (D 56)
20. Commoner A has no sons. He adopts his younger brother's son as his heir, and while living together with him, kills him without authorization.
This warrants public execution. (D 57)

21. **Infanticide by slaves.** When a slave kills his child without authorization, he is to be tattooed and sentenced to hard labor. After his sentence is complete, he is to be returned to his master. (*D 59*)

Bearing witness

22. **Errors of guilt.** *A* denounces *B* for having stolen an ox or having intentionally wounded a person. Now, *B* neither stole an ox nor wounded anyone. How is *A* to be sentenced?

If he did it on purpose, this is a case of falsely accusing another person. If it was unintentional, it is a case of carelessness in bearing witness. (*D 35*)

23. **Errors of facts.** *A* denounces *B* for having stolen an ox. Now, *B* had actually stolen a sheep, but not an ox. How is *A* to be sentenced?

This is a case of carelessness in bearing witness. (*D 37*)

24. *A* stole a sheep. *B* is aware of this, but intentionally denounces him saying that he has stolen an ox. Is this a case of “falsely accusing another” or of “carelessness in bearing witness?”

This is classified under the category “denouncing a theft, exaggerating the amount.” (*D 38*)

25. A person is denounced for having stolen 1000 cash. Upon interrogation he is found to have stolen 670 cash. How should the false accuser be sentenced?

Do not sentence him. (*D 31*)

26. **Effects of official rank.** A “Promoted Man” (second-lowest of the eighteen ranks of privilege) steals a sheep. Before his case has been judged, he falsely accuses another man of stealing a pig. How should he be sentenced?

He should escape mutilating punishments and be sentenced to hard labor. (*D 40*)

27. **Within mutual responsibility groups.** [The code states:]: When a member of a responsibility group of five denounces another member of his group in order to evade shared responsibility, and in stating the crime he is careless of the facts, the witness is to be punished with the punishment he sought to avoid.

The code also states, “When one cannot determine the criminal, to accuse another person constitutes the crime of carelessness in bearing witness.”

Now, *A* says that *B*, a member of his responsibility group, killed a man unlawfully. Upon arresting *B*, interrogation finds that he did not kill anyone, and that *A*’s statement was careless. Should *A* be sentenced for the crime of carelessness in bearing witness or should he be sentenced with the crime for which he sought to avoid shared responsibility?

He should be sentenced with the crime for which he sought to avoid shared responsibility. (*D 80*)

28. A robber enters into *A*’s house and murderously wounds *A*. *A* cries out, “Bandits!” but the four neighbor households in his mutual responsibility group and the village chief and elders are all absent and do not hear *A*’s cry. Should they be sentenced?

The four neighbor households having been absent, they are not liable, but the village chief and elders are. (D 81)

Breaches of official duty

29. **Unintentional poor performance.** [The code states:] “To open a counterfeit document and fail to detect that it is counterfeit deserves a fine of two suits of armor.” Now, in Xianyang they open a counterfeit passport and, not detecting that it is counterfeit, they seal it back up and send the traveler on to another prefecture, and other prefectures do the same in succession. When the traveler arrives at the pass he is caught. Is only the authority in Xianyang liable to be brought to court and fined or are all the other prefectures liable as well?

Those in Xianyang and in all other prefectures where the counterfeit passport was opened and not detected are liable. (D 46)

Xianyang, the Qin capital city, lay far west in the Wei River Valley. The traveler here is pictured traveling eastwards, exiting the valley at the Hangu Pass.

30. **Intentional deceit.** According to court precedent, when an official has been engaged in deceit and counterfeiting and the fine is one shield or more, once the sentence has been executed he is also to be permanently dismissed. (D 47)

31. **Liability of family.** How is a Field Foreman who does not apply himself to the duties of office but rather to corrupt conduct to be sentenced?

He is to be banished.

Is the wife of the exile liable as well or not?

She is not to be considered liable. (D 49)

32. A person is warranted to be banished. His wife had first denounced him. She is nevertheless considered to be liable. (D 50)

33. **Improper judgment.** Someone charged to lead to a superior officer a man of his own neighborhood who has committed immoral acts lets the man go instead. How is he to be sentenced?

He should be detained and put to penal labor like the person whom he released, pending the latter's arrest.

If he holds privileged rank, he is to be put to work in a government office. (D 51)

34. **Errors repaired.** When an officer loses documents, tallies, official seals, or balance weights, and he has already been tried and sentenced, but later himself finds what he had lost, is the sentence to be repealed?

No. (D 124)

Procedures of investigation and trial

35. **Interrogation.** In all cases of legal interrogation one should first listen to the testimony and write it down, letting each person questioned set out his own statement. Although the investigator may recognize that a person is stating lies, there is no need to challenge each of them. Once the statement has been completed, as it will not be cogent, insist then on those points that can be challenged. Once again attend fully to the response and then examine those points that remain unexplained, insisting on them. If one has insisted to the limit and the person has repeatedly lied, changing his words and refusing to submit, then, in cases where the statutes permit, the subject may be flogged. When a person is flogged, a written record must state: "Recorded herewith: Because X has repeatedly changed his statement and failed to provide a cogent explanation, he has been interrogated by flogging." (E 2)

36. **Trial.** If in trying lawsuits it is possible by means of documents to track down the defendant's words, obtaining the facts without flogging, this is the best means. Flogging is an inferior method, for when there is fear, everything is spoiled. (E 1)

STUDY QUESTIONS

1. *List the general principles that seem to guide the laws concerning theft. How “enlightened” would you say the laws of Qin were with respect to properly assigning criminal responsibility for theft and meting out measured sanctions?*
2. *In considering laws that pertain to family relationships, to what degree is the male householder licensed to exercise coercive power over wife, children, and servants?*
3. *In the section on bearing witness, how does the Qin code encourage “responsible” reports of legal violations and discourage bearing false witness?*
4. *What features of this code conform to your expectations about Qin Legalism, derived from historical accounts, and what features seem surprising?*

Sources and Further Readings

The main sources for this chapter are A.F.P. Hulswé, *Remnants of Ch'in Law* (Leiden: 1985) and the main Chinese commentarial monograph on which it is based (*Shuihudi Qin mu zhujian* (Beijing: 1978). Hulswé's full text translates the contents of bamboo strips that have been sorted into seven different texts and fragments of varying length. All but the final two here come from a text that has been given the title, “Answers to questions concerning legal statutes” (*Falü dawen*). It is, strictly speaking, an interpretive supplement to the legal statutes per se. In the tomb from which this document was excavated, the strips of the text had been placed to the right side of the grave master Xi's corpse, level with his neck.